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Bang & Olufsen A/S

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BANG & OLUFSEN A/S,

Plaintiff

v.

AIRSPRO-TWS STORE, ALIEXPRESSSS STORE,
ANTOR INTELLIGENCE PRODUCT STORE,
BENJAMIN STORE, BMQ STORE, FRESHONE
STORE, GLOBAL BANG-OLUFSEN PRODUCTS
STORE, GLOBAL BEAT-BEAT ONLINE STORE,
GLOBAL DIGITAL HUAZAI STORE, GLOBAL
EEGG STORE, GLOBAL HIGH-QUALITY STORE,
GLOBAL PIKAQIU STORE, GLOBAL TWS-
FACTORY STORE, H-GLOBAL STORE, JBL-
OFFICIAI FIAG SHIP STORE STORE,
LEFANXIAOPU STORE, LIDODO STORE,
LISTENVO AIR-TWS STORE, LISTENVO SPORT-
TWS STORE, MIDNITE ST STORE, NBONE
STORE, SHOP911338022 STORE, SSSY8888
STORE, SUM REDA STORE, XW STORE and
YYDS SHOPPING~ STORE,

Defendants

21-cv-9600 (JSR)

~~[PROPOSED]~~
PRELIMINARY
INJUNCTION ORDER

GLOSSARY

Term	Definition
Plaintiff or Bang & Olufsen	Bang & Olufsen A/S
Defendants	AirsPro-TWS Store, aliexpressss Store, Antor Intelligence Product Store, Benjamin Store, BMQ Store, Freshone Store, Global Bang-Olufsen products store, Global Beat-Beat Online Store, Global Digital Huazai Store, Global EEGG Store, Global High-quality Store, Global PikaQiu Store, Global TWS-factory Store, H-Global Store, JBL-Official flag ship store Store, LeFanXiaoPu Store, Lidodo Store, listenvo Air-TWS Store, ListenVo Sport-TWS Store, Midnite St Store, NBONE Store, Shop911338022 Store, sssy8888 Store, Sum Reda Store, XW Store and YYDS shopping~ Store
AliExpress	Aliexpress.com, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York
Epstein Drangel	Epstein Drangel LLP, counsel for Plaintiff
New York Address	244 Madison Ave, Suite 411, New York, New York 10016
Complaint	Plaintiff's Complaint
Application	Plaintiff's <i>Ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants' Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery
Serup Dec.	Declaration of Morten R. Serup in Support of Plaintiff's Application
Ioannou Dec.	Declaration of Karena K. Ioannou in Support of Plaintiff's Application
B&O Products	High-end luxury Danish consumer electronics, including the BEOPLAY wireless earbuds, BEOPLAY and BEOSOUND portable sneakers and BEOPLAY headphones
B&O Marks	U.S. Trademark Registration Nos.: 3,106,984 for "  ," for a variety of goods in Classes 9, 20, 35, 37, 41 and 42; 1,007,565 for "  " for a variety of goods in

	Classes 7, 9, 11, 12 and 15; 3,063,786 for “BANG & OLUFSEN” for a variety of goods in Classes 9, 20, 35, 37, 41 and 42; 1,006,022 for “BANG & OLUFSEN” for a variety of goods in Class 9; 4,489,925 for “BEOPLAY” for a variety of goods in Classes 9, 20, 35, 36 and 38; and 2,340,801 for “BEOSOUND” for a variety of goods in Class 9
Counterfeit Products	Products bearing or used in connection with the B&O Marks, and/or products in packaging and/or containing labels bearing the B&O Marks, and/or bearing or used in connection with marks that are confusingly similar to the B&O Marks and/or products that are identical or confusingly similar to the B&O Products
Infringing Listings	Defendants’ listings for Counterfeit Products
User Accounts	Any and all websites and any and all accounts with online marketplace platforms such as AliExpress, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them
Defendants’ Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)
Defendants’ Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants’ User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as PayPal Inc. (“PayPal”), Payoneer Inc. (“Payoneer”), the Alibaba Group d/b/a Alibaba.com payment services (e.g., Alipay.com Co., Ltd., Ant Financial Services Group), PingPong Global Solutions, Inc. (“PingPong”) and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly by AliExpress as well as any and all as yet

	undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise
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WHEREAS, Plaintiff having moved *ex parte* on November 19, 2021 against Defendants for the following: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery;

WHEREAS, the Court entered an Order granting Plaintiff's Application on November 19, 2021, which ordered Defendants to appear on November 30, 2021 at 11:00 a.m. to show cause why a preliminary injunction should not issue ("Show Cause Hearing");

WHEREAS, on November 23, 2021, Plaintiff filed a letter requesting to modify the TRO, specifically the briefing schedule;

WHEREAS, on November 23, 2021, the Court issued an order granting Plaintiff's request, modifying the briefing schedule and date of the Show Cause Hearing to December 10, 2021 at 10:00 a.m. ("November 23, 2021 Order");

WHEREAS, on December 2, 2021, Plaintiff made a telephonic application to the Court requesting to modify the briefing schedule in the November 23, 2021 Order;

WHEREAS, on the same day December 2, 2021, the Court issued an order granting Plaintiff's request, modifying the briefing schedule in order to allow Plaintiff time to effectuate service on the Defendants, and adjourning the Show Cause Hearing to December 10, 2021 at 10:00 am ("December 2, 2021 Order");

WHEREAS, on December 7, 2021 and December 8, 2021, pursuant to the alternative methods of service authorized by the TRO, Plaintiff served the Summons, Complaint, TRO, all papers filed in support of the Application, the November 23, 2021 and the December 2, 2021 Order on each and every Defendant;

WHEREAS, on December 10, 2021 at 10:00 a.m., Plaintiff appeared at the Show Cause Hearing, however, no Defendants appeared.

ORDER

1. The injunctive relief previously granted in the TRO shall remain in place through the pendency of this litigation, and issuing this Order is warranted under Federal Rule of Civil Procedure 65 and Section 34 of the Lanham Act.
 - a) Accordingly, Defendants are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final hearing and determination of this action or until further order of the Court:
 - i. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products or any other products bearing the B&O Marks and/or marks that are confusingly similar to, identical to and constitute a counterfeiting and/or infringement of the B&O Marks;
 - ii. directly or indirectly infringing in any manner any of Plaintiff's B&O Marks;
 - iii. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's B&O Marks, to identify any goods or services not authorized by Plaintiff;
 - iv. using any of Plaintiff's B&O Marks or any other marks that are confusingly similar to the B&O Marks on or in connection with Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products;
 - v. using any false designation of origin or false description, or engaging in any

action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defendants and Defendants' commercial activities and Plaintiff;

- vi. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts, Merchant Storefronts or Defendants' Assets and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;
- vii. effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order; and
- viii. knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs 1(a)(i) through

1(a)(vii) above and 1(b)(i) through 1(b)(ii) and 1(c)(i) below.

b) Accordingly, the Third Party Service Providers and Financial Institutions are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final hearing and determination of this action or until further order of the Court:

- i. secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to Defendants' Financial Accounts until further ordered by this Court;
- ii. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to Defendants' Assets and Defendants' Financial Accounts; and
- iii. knowingly instructing any person or business entity to engage in any of the activities referred to in subparagraphs 1(a)(i) through 1(a)(vii) and 1(b)(i) through 1(b)(ii) above and 1(c)(i) below.

c) Accordingly, the Third Party Service Providers are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final hearing and determination of this action or until further order of the Court:

- i. providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts; and
- ii. knowingly instructing any other person or business entity to engage in any of the activities referred to in subparagraphs 1(a)(i) through 1(a)(vii), 1(b)(i)

through 1(b)(ii) and 1(c)(i) above.

2. As sufficient cause has been shown, the asset restraint granted in the TRO shall remain in place through the pendency of this litigation, including that:
 - a) within seven (7) days of receipt of notice of this Order, any newly discovered Financial Institutions who are served with this Order shall locate and attach Defendants' Financial Accounts, shall provide written confirmation of such attachment to Plaintiff's counsel and provide Plaintiff's counsel with a summary report containing account details for any and all such accounts, which shall include, at a minimum, identifying information for Defendants and Defendants' User Accounts, contact information for Defendants (including mailing addresses and e-mail addresses), account numbers and account balances for any and all of Defendants' Financial Accounts.
3. As sufficient cause has been shown, the expedited discovery previously granted in the TRO shall remain in place through the pendency of this litigation, including that:
 - a) Plaintiff may serve interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure as well as Local Civil Rule 33.3 of the Local Rules for the Southern and Eastern Districts of New York and Defendants who are served with this Order shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiff's counsel.
 - b) Plaintiff may serve requests for the production of documents pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Defendants who are served with this Order shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff's counsel.
 - c) Within fourteen (14) days after receiving notice of this Order, all Financial Institutions

who receive service of this Order shall provide Plaintiff's counsel with all documents and records in their possession, custody or control (whether located in the U.S. or abroad), relating to any and all of Defendants' Financial Accounts, User Accounts and Merchant Storefronts, including, but not limited to, documents and records relating to:

- i. account numbers;
 - ii. current account balances;
 - iii. any and all identifying information for Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, names, addresses and contact information;
 - iv. any and all account opening documents and records, including, but not limited to, account applications, signature cards, identification documents, and if a business entity, any and all business documents provided for the opening of each and every of Defendants' Financial Accounts;
 - v. any and all deposits and withdrawal during the previous year from each and every of Defendants' Financial Accounts and any and all supporting documentation, including, but not limited to, deposit slips, withdrawal slips, cancelled checks and account statements; and
 - vi. any and all wire transfers into each and every of Defendants' Financial Accounts during the previous year, including, but not limited to, documents sufficient to show the identity of the destination of the transferred funds, the identity of the beneficiary's bank and the beneficiary's account number.
4. Within fourteen (14) days of receipt of service of this Order, the Third Party Service Providers served with this Order shall provide to Plaintiff's counsel all documents and

records in its possession, custody or control (whether located in the U.S. or abroad) relating to Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, documents and records relating to:

- i. any and all User Accounts and Defendants' Merchant Storefronts and account details, including, without limitation, identifying information and account numbers for any and all User Accounts and Defendants' Merchant Storefronts that Defendants have ever had and/or currently maintain;
 - ii. the identities, location and contact information, including any and all e-mail addresses, of Defendants;
 - iii. the nature of Defendants' businesses and operations, methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts and Defendants' Merchant Storefronts, a full accounting of Defendants' sales history and listing history under such accounts, and Defendants' Financial Accounts associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and
 - iv. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Counterfeit Products, or any other products bearing one or more of the B&O Marks and/or marks that are confusingly similar to, identical to and constitute a counterfeiting and/or infringement of the B&O Marks.
5. As sufficient cause has been shown, and pursuant to FRCP 4(f)(3), service may be made on, and shall be deemed effective as to Defendants if it is completed by one of the following

means:


- a) delivery of: (i) a PDF copy of this Order and (ii) a link to a secure website (including NutStore, a large mail link created through Rmail.com and via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where each Defendant will be able to download a PDF copy of this Order to Defendants' e-mail addresses to be determined after having been identified by AliExpress pursuant to **Paragraph V(C)** of the TRO; or
 - b) delivery of a message to Defendants through the system for communications established by the Third Party Service Providers on their respective platforms, where each Defendant will be able to download a PDF copy of this Order.
6. As sufficient cause has been shown, that such alternative service by electronic means ordered in the TRO and herein shall be deemed effective as to Defendants, Third Party Service Providers and Financial Institutions through the pendency of this action.
 7. As sufficient cause has been shown, service of this Order shall be made on and deemed effective as to the Third Party Service Providers and Financial Institutions if it is completed by the following means:
 - a) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PayPal Inc. will be able to download a PDF copy of this Order via electronic mail to EE Omaha Legal Specialist at EEOMALegalSpecialist@paypal.com;

- b) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where AliPay.com Co., Ltd., Ant Financial Services will be able to download a PDF copy of this Order via electronic mail Mr. Di Zhang, Member of the Legal & Compliance Department – IP, at di.zd@alipay.com;
 - c) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Alibaba will be able to download a PDF copy of this Order via electronic mail to Chloe He, Alibaba Group at chloe.he@alibaba-inc.com;
 - d) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Payoneer Inc. will be able to download a PDF copy of this Order via electronic mail to Payoneer Inc.'s Customer Service Management at customerservicemanager@payoneer.com and Edward Tulin, counsel for Payoneer Inc., at Edward.Tulin@skadden.com; and
 - e) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PingPong Global Solutions Inc. will be able to download a PDF copy of this Order via electronic mail to PingPong Global Solutions Inc.'s Legal Department legal@pingpongx.com.
8. Defendants are hereby given notice that they may be deemed to have actual notice of the terms of this Order and any act by them or anyone of them in violation of this Order may be considered and prosecuted as in contempt of this Court.
9. The \$20,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this Order is terminated.
10. This Order shall remain in effect during the pendency of this action, or until further order of the Court.

11. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order on two (2) days' notice to Plaintiff or on shorter notice as set by the Court.

SO ORDERED.

SIGNED this 10th day of December, 2020, at 10:39 a.m.
New York, New York



HON. JED S. RAKOFF
UNITED STATES DISTRICT JUDGE